



Mukherjee v. Wash. State Univ.

United States District Court for the Eastern District of Washington

July 22, 2020, Decided; July 22, 2020, Filed

No. 2:19-cv-00402-SMJ

Reporter

2020 U.S. Dist. LEXIS 129667 *

ATANU MUKHERJEE, Plaintiff, v. **WASHINGTON STATE UNIVERSITY**, Defendant.

Opinion

Subsequent History: Motion granted by [Mukherjee v. Wash. State Univ., 2020 U.S. Dist. LEXIS 149301 \(E.D. Wash., Aug. 18, 2020\)](#)

Summary judgment denied by, Motion denied by [Mukherjee v. Wash. State Univ., 2021 U.S. Dist. LEXIS 28750, 2021 WL 607856 \(E.D. Wash., Feb. 16, 2021\)](#)

Core Terms

protective order, parties, terms and conditions, terms, leave to renew, discoverable, discovery, documents

Counsel: [*1] For Atanu Mukherjee, Plaintiff: Richard D Wall, LEAD ATTORNEY, Richard D Wall PS, Spokane, WA; David M Koller, PRO HAC VICE, Koller Law LLC, Philadelphia, PA.

For **Washington State University**, Defendant: Joseph Ehle, LEAD ATTORNEY, Attorney General of Washington - SPO, Spokane Division, Spokane, WA.

Judges: SALVADOR MENDOZA, JR., United States District Judge.

Opinion by: SALVADOR MENDOZA, JR.

ORDER DENYING DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND PARTIES' STIPULATION WITH LEAVE TO RENEW

Before the Court, without oral argument, are Defendant's Motion and Memorandum for Protective Order, ECF No. 15, and the Stipulation of Parties, ECF No. 17. Defendant originally moved the Court "for entry of an order determining whether documents and information sought by Plaintiff Mukherjee through discovery are discoverable and setting the terms and conditions for disclosure, if any." ECF No. 15 at 1. The parties also submitted a Stipulation of Parties indicating that the parties stipulate "to the confidential and/or privileged nature of the records the Plaintiff now seeks and to be bound by the terms and conditions of the proposed protective order." ECF No. 17 at 1. Having reviewed the motion and the file in this matter, [*2] the Court is fully informed and denies the motion with leave to renew.

As a preliminary matter, the parties are reminded that the question of whether information is discoverable is the appropriate subject of a motion to compel discovery. However, because the parties agree that the information sought is discoverable, the Court understands that this issue is moot¹ and the Motion and Memorandum for

¹ Defendant's Motion and Memorandum for Protective Order, ECF No. 15, and the Stipulation of Parties, ECF No. 17, were filed concurrently. See ECF No. 15 ("The motion is supported by the memorandum of authorities supporting the Defendants' Motion for Protective Order, the Declaration of Joseph Ehle re: Motion for Protective Order, and the Stipulation of Parties."). It

Protective Order is denied as to this requested relief.

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As to the request for a protective order, the parties agree that Plaintiff will "be bound by the terms and conditions of the proposed protective order." ECF No. 17 at 1. However, Defendant's Motion and Memorandum for Protective Order contains no proposed protective order. See ECF No. 15. Nor does the declaration of counsel filed concurrently therewith. See ECF No. 16. Defendant's Motion and Memorandum for Protective Order seems to imply that the Court should draft the terms of the protective order from whole cloth. See ECF No. 15 at 3 ("[T]he Court should decide if the information and/or documents sought by Plaintiff Mukherjee should be provided, and if so, under what terms and conditions."). However, this contradicts the Stipulation of [*3] Parties, which indicates the parties have stipulated to specific terms of a proposed protective order. ECF No. 17 at 1. It is therefore unclear whether there is a dispute and, if there is a dispute, what relief the parties are seeking.

If the parties have stipulated to the terms of a protective agreement, they may file a renewed motion for a protective order with the stipulated protective order attached for the Court's review. If the parties dispute the appropriate terms of a protective order, then they should file an appropriate motion, which must specifically describe what information is being sought, the legal protections each party asserts should apply, and the arguments each party relies on in taking its respective position with regard to that information.

Accordingly, **IT IS HEREBY ORDERED:**

Defendant's Motion and Memorandum for Protective Order, **ECF No. 15**, and the Stipulation of Parties, **ECF No. 17**, are **DENIED WITH LEAVE TO RENEW**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 22nd day of July 2020.

/s/ Salvador Mendoza, Jr.

SALVADOR MENDOZA, JR.

United States District Judge

is unclear why the parties dispute the discoverability of the information in one filing and agree to its discoverability in another.